

APPLICANTS:
Krishna Pollard and Savitri Pollard

**REQUEST: Special Exception to permit
a motor vehicle repair shop in the
Agricultural District**

HEARING DATE: September 27, 2006

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS**

Case No. 5555

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Krishna Dave Pollard

CO-APPLICANT: Savitri M. Pollard

LOCATION: 2018 Mountain Road, Joppa
Tax Map: 60 / Grid: 3F / Parcel: 78
First (1st) Election District

ZONING: AG / Agricultural

REQUEST: A special exception pursuant to Section 267-53D(3) of the Harford County Code, to allow a motor vehicle repair shop in the Agricultural District, and an interpretation of Section 267-39C(7)(g) of the Harford County Code.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants, are the owners of a 9.624 acre parcel of agriculturally zoned land located on Mountain Road. The Applicants originally requested both a special exception to allow a motor vehicle repair shop in this Agricultural District, and an interpretation that Section 267-39C(7)(g) does not apply to their request.

The requested interpretation, which would have allowed this motor vehicle repair shop to be considered even though adjacent properties are not serviced by public water, was given in favor of the Applicants by decision dated March 20, 2007, by the Harford County Board of Appeals.

Now before the Board is the remaining issues of whether other, pertinent requirements of the motor vehicle repair special exception can be met by the Applicants, and whether the Applicants' use otherwise complies with the more general requirements of the Subdivision Regulations.

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Co-Applicant Krishna Dave Pollard first described his property, the neighborhood and his proposed use. Referring to the site plan (Attachment 4 to the Staff Report), Mr. Pollard indicated that he and his family now reside on Parcel 78 which is 4.3 acres in size. Mr. Pollard, his wife, daughter and son, have lived on this parcel for approximately 17 years.

Mr. Pollard then identified Parcel 279, and Parcel 75, both of which are shown on the site plan and both of which have been purchased by the Applicants. Both of these parcels adjoin Parcel 78. The Applicants also have purchased Parcel 189 as shown on the site plan. These parcels total roughly 19 acres, and are all under the ownership of the Applicants. Mr. Pollard identified the property as being the location of an old sand and gravel quarry, which has been abandoned for many years, and which supports a relatively sparse vegetative cover. The property also contains standing water and wetlands. The old quarry property slopes somewhat downhill from Mountain Road, MD Route 152. Mr. Pollard identified Mountain Christian Church and School as being located somewhat north of the subject property on MD Route 152; the Azalea Patch Nursery is located to the north, and closer to the subject property; and a landscaping business is located across MD Route 152. Directly behind the subject property, to the southeast, is a residential subdivision.

Mr. Pollard is a technician certified in body and paint work, employed at Bob Bell Chevrolet for about 14 years. Mr. Pollard wishes to begin his own, small body and repair shop, located in a new building which he proposes to erect on the subject property. The overall site is to be re-subdivided by Mr. Pollard so that Parcel 78, on which the Applicants reside, will be combined with a part of Parcel 279. On this newly created parcel will be located the body and repair shop. The body and repair shop will have a separate easement which will give it access to MD Route 152, on the south side of the Pollard site.

The proposed repair shop will measure approximately 60 feet by 50 feet, and will be located about 160 feet from the easterly side of the Pollard site and about 165 feet from the southwesterly side. Mr. Pollard will do minor collision restoration, and paint and body work in the facility, including insurance work.

The Applicants propose additional screening to the southwesterly side of the garage in order to increase the existing vegetative screen between the new building and the adjoining residential properties. At present that area is completely wooded. The proposed building will be constructed just outside of and adjacent to the existing wood line.

Mr. Pollard explained, as shown on the plat, that access to the shop building will be from MD Route 152 by virtue of an easement across reconfigured Parcel 279. The shop building itself will have three bays, including a paint booth. The shop will have two paint prep areas and will consist of about 3,000 square feet in total. Hours of operation will be Monday through Friday from 7:00 a.m. to 6:00 p.m., and Saturday from 8:00 a.m. to 2:00 p.m. No work will be performed on Sunday. Mr. Pollard will eventually have two full-time employees, in addition to himself. Eventually he will work full-time at the facility.

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A paved parking area is shown around the building, and Mr. Pollard states that he will allow no outside long-term storage. He will comply with all State and Federal Regulations, and will comply with all Zoning and Development Regulations. His neighbors, he states, have been supportive of his application. In support, Mr. Pollard submitted a petition signed by certain of his neighbors offered and accepted as Exhibit 6. This petition generally asserts that the neighbors who signed the petition have no objection to the special exception.

Next for the Applicant testified Kevin Small, who was offered and accepted as a professional land planner and expert landscape architect. Mr. Small indicated that Parcel 78, the parcel on which the Applicants presently reside, will be re-configured to end up with approximately 9 acres, including the area in which the shop is to be located. As stated by Mr. Pollard, the shop building will have a 50 foot access easement to MD Route 152.

The subject property drops from Mountain Road downward, which is most likely the result of historic quarrying activities on the site. The property is almost fully disturbed as a result of those past quarrying operations.

While an existing tree stand lies between the proposed location of the building and the residential neighbors to the southwest, Mr. Small is proposing additional landscaping consisting of 18 white pines approximately 6 to 7 feet tall be installed as shown on the site plan.

Light fixtures will be attached to the outside of the building on the front and east and west sides. The side which faces the residential subdivision will not be lighted. There will be no parking on the side of the property which faces the residential subdivision.

The building is to be located as proposed due to the fairly extensive wetlands which exist on the property. The building is also close to the remaining undisturbed grade on the property, on which is located the existing wooded area. No major cutting of trees is proposed.

Mr. Small believes that the Applicants meet all specific development requirements. Mr. Pollard will have no long-term outside storage. The building will be residential in character. Parking and drive areas will be hard-surfaced, asphalt paved. The access on MD Route 152 will be at the location of an historic access onto the old quarry property.

Mr. Small has reviewed the Limitations, Guides and Standards section of the Code, Section 267-9I, and feels that all considerations are adequately met. The property is already highly impacted, with virtually no top soil left, all having been stripped from the site in the past. Mr. Small sees no adverse impact on any adjoining properties, especially given the fact the site is now heavily impacted by past uses. The proposed use will be screened from residential properties. He sees no greater impact than if the use were located somewhere else within the Agricultural District.

Next, for the Harford County Department of Planning and Zoning, testified Anthony McClune. Mr. McClune stated that the Department of Planning and Zoning has recommended disapproval of the application.

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The Staff Report describes the zoning in the neighborhood as follows:

“The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. The predominant zoning classification is AG/Agricultural. There are areas of RR/Rural Residential representing existing residential developments. Commercial zoning along Route 152 is limited to small parcels of B1/Neighborhood Business District. The subject property is zoned AG/Agricultural as are the properties adjoining on the north, south and east side. The properties adjoining on the west side are zoned RR/Rural Residential.”

The Staff Report notes that the proposal is not consistent with the Master Plan, and indicates that:

“The repair shop may adversely impact the residents in this area.”

No other evidence or testimony was given in opposition.

APPLICABLE LAW:

The Applicants have requested a special exception to Section 267-53D(3) of the Harford County Code, which states:

“(3) Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:

- (a) A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.*
- (b) The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.*
- (c) Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.*
- (d) The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of Section 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.*

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- (e) *The rental or storage of trailers, boats and trucks shall be prohibited.*
- (f) *Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*
- (g) *Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*
- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*
- (i) *A minimum parcel area of 1 acre shall be required.*
- (j) *In the AG District, the use shall be operated by the resident of the property.”*

Harford County Development Regulations Section 267-39C(7) states:

- “(7) *Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*
- (a) *Pumps shall be at least twenty-five (25) feet from all road rights-of-way.*
- (b) *All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.*
- (c) *No obstructions which limit visibility at intersections or driveways shall be permitted.*

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- (d) *Lighting shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.*
- (e) *No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds.*
- (f) *Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.*
- (g) *A motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply.” (Subsection (g) is not applicable by virtue of Board of Appeals Decision of March 20, 2007)*

Section 267-9I, Limitations, Guides and Standards is also applicable to this request and will be discussed in further detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Co-Applicant, Krishna Dave Pollard, a certified motor vehicle body and repair technician with many years of experience proposes to construct a 3,000 square foot shop on this agriculturally zoned property in which he will conduct his own body and repair business. The newly created parcel upon which the shop will sit is somewhat oddly configured. It is part of a larger site, all of which is owned by the Applicants, which was used many years ago as a sand and gravel quarry. The property has been abandoned for many years and is now characterized by sparse vegetation in certain areas, wetlands, and with some remaining woodlands which the Applicants propose to maintain as screening between the body shop and the neighboring residential community. The newly subdivided parcel on which the body shop will sit has been created by the Applicants in order to meet the requirement that a special exception use of this type may be operated only by the resident of the property. Nothing in the Code prohibits the Applicants from readjusting property lines and combining parcels in order to meet this requirement.

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While the Department of Planning and Zoning has recommended denial of the application, indicating that the use “may” adversely impact residents in the area, in fact no testimony or evidence was presented of such a likelihood. The closest residential properties will be located approximately 160 feet from the building, with much of the intervening land presently wooded, and with the Applicants proposing additional supplemental screening. Lighting and outside parking will be minimized and directed away from the adjoining residential subdivision. The Applicants will, by necessity, be required to meet other restrictive special exception requirements. A statement of no opposition was signed by many of the surrounding neighbors. In truth, there is simply no evidence upon which to make a finding of any adverse impact to the surrounding residences.

The Applicants must first of all comply with the special exception requirements of Section 267-53D(3) of the motor vehicle repair shop special exception. Those requirements are addressed as follows:

(3) *Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:*

(a) *A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.*

The property is zoned AG/Agricultural, and the required buffer will be provided. In fact, a buffer of at least 160 feet is being provided.

(b) *The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.*

Those requirements are addressed below.

(c) *Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.*

No approval for such uses is being requested, and therefore outdoor storage of these items will be prohibited.

(d) *The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of Section 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.*

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The Applicants must comply with this requirement.

- (e) *The rental or storage of trailers, boats and trucks shall be prohibited.*

There shall be no storage of trailers, boats or trucks.

- (f) *Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*

The Applicants propose no long-term storage of vehicles. Testimony indicates that the parking areas will be screened from adjacent properties. The dumpster area will be enclosed, as shown by the site plan.

- (g) *Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*

Testimony is that the proposed building will be compatible with adjacent properties and with the neighborhood.

- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*

All work will be performed inside. The Applicants will be required to meet State and Federal emission requirements.

- (i) *A minimum parcel area of 1 acre shall be required.*

The Applicants propose a newly subdivided parcel of 9.6 acres.

- (j) *In the AG District, the use shall be operated by the resident of the property.*

The use will be operated only by Mr. Pollard.

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Accordingly, all specific requirements of Section 267-53D(3) are or will be met.

Section 267-39(C)(7) is also applicable and is addressed as follows:

(7) *Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*

(a) *Pumps shall be at least twenty-five (25) feet from all road rights-of-way.*

No pumps are proposed.

(b) *All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.*

The Applicants are in compliance with this requirement.

(c) *No obstructions which limit visibility at intersections or driveways shall be permitted.*

The Applicants comply with this requirement.

(d) *Lighting shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.*

The Applicants comply with this requirement.

(e) *No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds.*

The Applicants comply with this requirement.

(f) *Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.*

The Applicants propose compliance with this section.

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- (g) *A motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply.*

This requirement has been found by the Board of Appeals to not be applicable to this request.

Accordingly, it can be seen that all the specific requirements of Section 267-39C(7) can be met.

Furthermore, the request, in addition to complying with the specific requirements of the pertinent special exception ordinance, must comply with the Limitations, Guides and Standards Section 267-9I, which is addressed as follows:

- (1) *The number of persons living or working in the immediate area.*

This area contains a mix of institutional, retail, commercial and residential uses. The property will access MD Route 152, a heavily traveled major arterial road. The body and repair shop will have, at most, three full-time employees. There would not appear to be any negative impact on the number of people living or working in the area by the fairly low intensive and limited use proposed.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

As noted, traffic on MD Route 152 is heavy. However, the limited business of the proposed use should have no impact on the traffic flow on MD Route 152, or on traffic conditions. Furthermore, good visibility exists both in the north and south direction from the proposed driveway, according to the Staff Report.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the County.*

The proposed use will be located on what is an abandoned quarry, from which most of the top soil has been removed in years past. The number of uses which can be made of that property is highly limited. There are scattered residences in the area, for the most part being located behind, to the southeast side of the parcel. As a result, there would not appear to be any impact on the orderly growth of the neighborhood if the proposal were allowed.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There should be no adverse impact from these conditions given that the Applicant must meet all State and Federal emission requirements.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the County or persons to supply such services.*

The Harford County Sheriff's Office and the Maryland State Police will provide police protection. The Joppa/Magnolia Volunteer Fire Department will provide fire protection and emergency service. The property will be serviced by a private well and septic.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

While the Staff Report notes that the proposal is not consistent with generally accepted planning principles because of the limited distance between the proposed use and adjacent dwellings, it is in fact found that a distance of 160 feet from the proposed building to the adjacent residential building lot line, with that area being wooded, is not inconsistent with generally accepted engineering and planning principles. Indeed, the applicable requirement is that a buffer yard of a mere 10 feet be maintained. The Applicants propose a buffer greatly in excess of that requirement (160 feet).

- (7) *The structures in the vicinity, such as schools, houses or worship, theaters, hospitals, and similar places of public use.*

While a church and school have been identified to the north of the property, sufficient distance exists between the proposed use and those institutional uses so as to allow no anticipated impact.

- (8) *The purposes set forth in this Part I, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The Staff Report indicates that the proposal is not consistent with the Master Plan.

It is true that the 2004 Harford County Master Plan and Land Use Element Plan designates the area in which the subject property is located as a rural area. Nevertheless, the area itself has seen heavy activity in the past and in fact the Master Plan indicates that mining is not an unusual characteristic of the Joppa/Joppatowne planning area. Furthermore, the Harford County Council has made a motor vehicle repair shop a special exception in an agricultural zone.

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Doing so is a legislative finding of compatibility with other principally permitted uses in this district. Accordingly, given the nature of special exceptions in general, and the history of this property and the area in particular, it cannot be found the proposed use is not in compliance with the general requirements of the Harford County Master Land Use Plan. In any event, the Land Use Plan is a guide only, and cannot, by itself, be used as a basis for denial of an application.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

Again, the Staff Report indicates “some concern” regarding containment measures of any liquid products stored on-site. However, the Applicants will store, at most, very minimum amounts of liquid materials. Those materials must be stored and maintained pursuant to State and Federal Regulations. There is simply no basis for a finding of adverse impact due to this feature of the proposed use.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Lastly, the proposal must be reviewed in light of the precepts of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981), which provides that no special exception shall be allowed if its impact at a particular location is greater, more adverse, than its impact at similar locations within the zone.

The proposal itself is set on a large parcel, relatively far removed from MD Route 152. Its access onto MD Route 152 is good, with adequate visibility in both directions. The operation will be a fairly low-key use, with the Mr. Pollard and two full-time employees at most on the parcel. There will be no long-term outside storage, and the Applicants will not store refuse or other materials outside the building. While some residential uses are located fairly close to the property, those uses are screened by the fairly extensive woodlands. Furthermore, there has been no opposition noted from any resident.

Accordingly, it can be seen that the impact of the proposed use on the neighborhood will be minimal, and certainly no greater than the impact of such a use at many other allowable location within the zone.

CONCLUSION:

Accordingly, for the above reasons, it is recommended that the proposed special exception be granted, subject to the following conditions:

1. The Applicants will comply with all specific requirements of Section 267-53D(3), and Section 267-39C(7), with the exception of Section 267-39C(7)(g) which has been found to be not applicable to the subject property.

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2. There shall be no outside storage of vehicles, tires, equipment or materials. Parking of individual vehicles awaiting repair or pick-up after repair, will be allowed for no more than thirty (30) days.
3. The Applicants shall provide landscaping as shown in their landscaping plan and shall take all necessary measures to insure that the existing tree cover between the Applicants' property and adjoining residential uses is maintained.
4. Lighting shall be directed away from all property lines and onto the subject property.
5. The operation shall be 7:00 a.m. to 7:00 p.m. Monday thru Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays. There will be no work on Sundays. The business shall employ no more than three (3) full-time employees (or equivalent part-time employees), including the Applicant.
6. The request shall comply with all State and Federal requirements concerning emissions from paint and body repair from its paint and body repair operation.
7. The approval is for the Applicants' use only and shall terminate at such time as the business is sold or Mr. Pollard ceases his active participation in the business, or moves from the subject property.

Date: October 17, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 15, 2007.